

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF	)	
	)	
Tamms Industries,	)	ADMINISTRATIVE ORDER
Kirkland, Illinois	)	
	)	EPA-5-01-113(a)-IL-05
Proceeding Under Section	)	
113(a)(3) and 114(a) of the	)	
Clean Air Act, 42 U.S.C.	)	
§§ 7413(a)(3) and 7414(a)	)	

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**Administrative Order**

1. The Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, is issuing this Order to Tamms Industries (Tamms), under Sections 113(a)(3) and 114(a) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a)(3) and 7414(a).

**Statutory and Regulatory Authority**

2. Section 183(e) of the Act, 42 U.S.C. § 7511b(e), authorizes U.S. EPA to promulgate national volatile organic compound (VOC) emissions standards for architectural coatings that have the potential to contribute to ozone levels that violate the national ambient air quality standards (NAAQS) for ozone.

3. On September 11, 1998, the Administrator of U.S. EPA promulgated national regulations under Section 183(e) of the Act, 42 U.S.C. § 7511b(e). 63 Fed. Reg. 48848. These regulations are codified at 40 C.F.R. Part 59, Subpart D (40 C.F.R. §§ 59.400 through 59.413, and Appendix A).

4. Section 183(e)(6) of the Act states, "Any regulation established under this subsection shall be treated, for purposes of enforcement of this chapter, as a standard under section 7411 of this title and any violation of such regulation shall be treated as a violation of a requirement of section 7411(e) of this title."

5. 40 C.F.R. § 59.402(a) requires that, except as provided in §§ 59.403 and 59.404, each manufacturer and importer of any architectural coating subject to this subpart shall ensure that the VOC content of the coating does not exceed the applicable limit in table 1 of this subpart.

6. 40 C.F.R. § 59.402(b) states: "Except as provided in paragraph (c) of this section, if anywhere on the container of any architectural coating, or any label or sticker affixed to the container, or in any sales, advertising or technical literature supplied by the manufacturer or importer or anyone acting on their behalf, any representation is made that indicates that the coating meets the definition of more than one of the coating categories listed in table 1 of this subpart, then the most restrictive VOC content limit shall apply."

7. 40 C.F.R. § 59.401 states: "Primer means a coating formulated and recommended for application to a substrate to provide a firm bond between the substrate and subsequent coatings."

8. 40 C.F.R. § 59.401 states: "Undercoater means a coating formulated and recommended to provide a smooth surface for subsequent coatings."

9. 40 C.F.R. § 59.408(b) states, in part: "[e]ach manufacturer and importer of any architectural coating subject to the provisions of this subpart shall submit an initial notification report no later than the applicable compliance date specified in § 59.400. . .", specifically, no later than September 13, 1999.

10. Under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), the Administrator of U.S. EPA may issue an order requiring compliance to any person who has violated or is violating a requirement of Section 111 of the Act, 42 U.S.C. § 7411.

11. Under Section 114(a) of the Act, 42 U.S.C. § 7414(a), the Administrator may require any person who is subject to any requirement of the Act to provide information required by the Administrator. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

**Findings**

12. Tamms Industries, 3835 State Route 72, Kirkland, Illinois, is a manufacturer of architectural coatings subject to 40 C.F.R. Part 59, Subpart D.

13. Tamms manufactures Dural 333, a two-component, epoxy-based coating.

14. Dural 333 is a primer and undercoater as defined in 40 C.F.R. § 59.401, when manufactured for use with an epoxy or polyurethane topcoat.

15. Dural 333 must comply with the VOC emission limit of 350 grams per liter, as set forth in 40 C.F.R. Part 59, Subpart D, table 1, except as provided in § 59.404.

16. Tamms manufactures Dural 1004, a two-component, solvent-based coating.

17. Dural 1004 is an industrial maintenance coating as defined in 40 C.F.R. § 59.401, when manufactured for use in extreme environmental conditions including repeated heavy abrasion.

18. Dural 1004 must comply with the VOC emission limit of 450 grams per liter, as set forth in 40 C.F.R. Part 59, Subpart D, table 1, except as provided in § 59.404.

19. Neither Dural 333 nor Dural 1004 is a low-volume coating subject to the tonnage exemption at 40 C.F.R. § 59.403.

20. Tamms owns or operates an "emission source" within the meaning of Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1).

21. On November 13, 2000, U.S. EPA issued a Finding of Violation to Tamms alleging that Tamms was in violation of 40 C.F.R. Part 59, Subpart D.

22. On December 6, 2000, Tamms met with U.S. EPA to discuss the violations alleged in the November 13, 2000 Finding of Violation.

23. Tamms continues to manufacture and sell Dural 333, a primer and undercoater, with a VOC limit in exceedance of 350 grams per liter.

24. Tamms continues to manufacture and sell Dural 1004, an industrial maintenance coating, with a VOC limit in exceedance of 450 grams per liter.

#### **Compliance Program**

25. Tamms shall comply with, and maintain continuous compliance with, all requirements of 40 C.F.R. Part 59, Subpart D for all architectural coatings, including Dural 333 and Dural 1004.

26. On or before July 31, 2001, Tamms shall submit the first of six semi-annual reports to:

Attn: Compliance Tracker, AE-17J  
Air Enforcement and Compliance Assurance Branch  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

These reports shall include the following: a list of all products subject to 40 C.F.R. Part 59, Subpart D, manufactured in the previous semi-annual period; each product's VOC content limit and category; the results of any 40 C.F.R. Part 60, Appendix A, Method 24 testing conducted on any Tamms products in the previous semi-annual period; and the estimated amount of any annual exceedance fees to be paid for manufacturing of products in the previous semi-annual period.

#### **General Provisions**

27. This Order does not affect Tamms' responsibility to comply with other local, state, and federal laws and regulations.

28. This Order does not restrict U.S. EPA's authority to enforce Sections 113 and 114 of the Act, or any other section of the Act.

29. Nothing in this Order limits U.S. EPA's authority to seek appropriate relief, including penalties under Section 113 of the Act, 42 U.S.C. § 7413, for Tamms' violations of Section 111 of the Act.

30. Failure to comply with this Order may subject Tamms to penalties of up to \$27,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413.

31. The terms of this Order are binding on Tamms, its assignees and successors. Tamms shall give notice of this Order to any successors in interest, prior to transferring ownership, and shall simultaneously verify to U.S. EPA, at the address in paragraph 21, that Tamms has given such notice.

32. Under 40 C.F.R. Part 2, Subpart B, Tamms is entitled to assert a business confidentiality claim covering any part of the submitted information which is not emission data or necessary to determine emission data. Failure to assert such a claim makes the submitted information available to the public without further notice. Information subject to a business confidentiality claim may be available to the public only to the extent set forth in 40 C.F.R. Part 2, Subpart B.

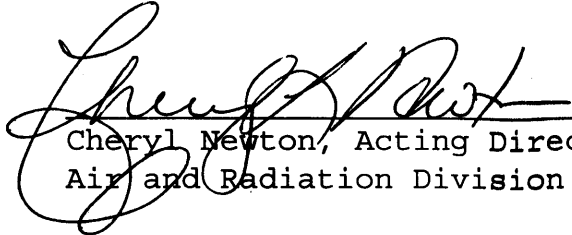
33. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

34. U.S. EPA may use any information submitted under this Order in an administrative, civil, or criminal action.

35. Section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4), states that an Order shall not take effect until the person to whom it is issued has had an opportunity to confer with U.S. EPA about the alleged violation. Therefore, U.S. EPA is giving Tamms an opportunity to confer with U.S. EPA concerning this Order. Tamms may schedule a conference with U.S. EPA by calling Shaun Burke at (312) 353-5713 within three days of Tamms's receipt of this Order.

36. This Order is effective seven calendar days following Tamms's receipt of this Order.

5/7/01  
Date

  
Cheryl Newton, Acting Director  
Air and Radiation Division

Enclosures

CERTIFICATE OF MAILING


I, Betty Williams, certify that I sent the Administrative Order, EPA-5-01-113(a)-IL-05, by Certified Mail, Return Receipt Requested, to:

Jeffrey A. Pink  
Tamms Industries  
3835 State Route 72  
Kirkland, Illinois 60146

I also certify that I sent a copy of the Administrative Order, EPA-5-01-113(a)-IL-05, by First Class Mail to:

Julie Armitage, Acting Section Manager  
Compliance and Systems Management  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702

on the 8<sup>th</sup> day of May 2001.

  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 709 93400 0000 8977676